IN THE

SUPREME COURT OF THE UNITED STATES

October Term

No. 822

ALDRICH JEMISON,

Petitioner,

versus

EARLINE B. BROWN,
OCIE ALMA REEVES,
OLLIE MAE REEVES,
and WILLIE PAYR,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE RESPONDENT
EARLINE B. BROWN IN OPPOSITION

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[illegible]

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OPINION BELOW

The opinion of the Supreme Court of Alabama in *Jemison* v. *Brown* is reported in ..... Ala. ....., 202 So. 2d 44 and is set forth in detail in Appendix B of Petitioner's Brief. The judgment of the Circuit Court of Dallas County, Alabama, in Equity, was entered on December 22nd, 1965 and is also found in Appendix B of the Petitioner's Brief.

JURISDICTION

The Respondent, Earline B. Brown denies that this Honorable Court has jurisdiction under 28 U. S. C. 1297 (3) because:

1. A Constitutional question which has been brought to the attention of this Honorable Court was not properly raised at the Trial Court level nor in the Supreme Court of the State of Alabama.

2. For it does not appear affirmatively from the record that a Federal question was presented for decision to the Supreme Court of Alabama and that the Federal question presented was necessary to the determination of the cause.

3. For that it does not affirmatively appear from the record that a Federal question was actually decided by the Supreme Court of Alabama or that the judgment or opinion of the Supreme Court of Alabama as rendered could not have been given without deciding a Federal question.

4. For that it affirmatively appears from the transcript of evidence that no Federal question was ever presented for decision to the Supreme Court of Alabama, nor that the basis of the decision of the Supreme Court of Alabama turned on a Federal question. The transcript of evidence clearly shows that the Supreme Court of Alabama based its entire decision upon the Statutes and Laws of the State of Alabama.

5. For that it does not affirmatively appear that the decision of the Supreme Court of Alabama turned on any Federal question or Constitutional right guaranteed to the Petitioner as this question was never pre-

sented to the Supreme Court of Alabama nor to the Trial Court.

QUESTIONS PRESENTED

As to the Respondent Earline B. Brown, the only questions presented are as follows:

1. Should this Court take jurisdiction under Title 28, U. S. C. 1257 (3) when the alleged denial of due process (personal racial bias of Trial Judge) as secured by the Constitution of the United States was not properly presented to the Trial Court nor to the Supreme Court of Alabama?

2. Whether or not this Honorable Court should take jurisdiction in this matter when it affirmatively shows that the Constitutional question involved was not raised at the Trial Court level nor presented to the Supreme Court of Alabama for decision?

3. Should this Court take jurisdiction of this cause when the Supreme Court of Alabama did not actually decide a Federal question and the judgment of the Supreme Court of Alabama as rendered was properly given without deciding a Federal question?

4. Whether or not there is any material fact shown in the transcript of evidence which shows that the Trial Judge rendered his decision on an unsubstantial allegation of fraud because of his personal racial bias against Petitioner and Petitioner's Negro Trial Counsel?

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations are provided in the Appendix, infra p.

STATEMENT

There are many inaccuracies found in "Petitioner's Statement" and it fails to state the true facts in first Trial held before Judge James A. Hare, and it is for this reason that the Respondent, Earline B. Brown makes the following statement of the case:

On April 2, 1965, the Petitioner filed a Bill of Complaint against the Respondent Earline B. Brown, in the Circuit Court of Dallas County, Alabama, in Equity. (R 2-3) In the Petitioner's Bill of Complaint it prayed for a sale and division of certain property which is located in Dallas County, Alabama. It alleged that the Petitioner, Aldrich Jemison, and the Respondent, Earline B. Brown, were joint tenants of this property and each owned a one-half undivided interest in the same. It further alleged that the Petitioner Aldrich Jemison derived his title from his mother Rachel Jemison who was a joint tenant with her husband, Scott Jemison. Rachel Jemison died intestate on or about July 24, 1948 and was survived by her son Aldrich Jemison and her husband Scott Jemison. The Respondent Earline B. Brown then married Scott Jemison and derived her one-half interest in the property by the Last Will and Testament of Scott Jemison. The Complaint further alleged that the property could not be equitably divided or partitioned and prayed that the Court enter an order selling the same. (R 2-3)

On April 19, 1965, the Respondent Earline B. Brown, through her attorney, T. G. Gayle (Thomas G. Gayle) of Selma, Alabama, filed an answer to the Bill of Complaint denying each and every allegation of the Bill of Complaint which was previously filed

and further stated that the Petitioner, Aldrich Jemison was not the son of Rachel and Scott Jemison and that he therefore did not have any interest in the said real estate. (R 3-4)

On May 25, 1965, a hearing on the petition for sale and division was had in the Circuit Court of Dallas County, Alabama, before the Honorable Judge James A. Hare, Judge of the Circuit Court of Dallas County, Alabama. (R 119-157) At said hearing, it was brought out by the evidence that Aldrich Jemison was not the son of Rachel Jemison as alleged in the Petitioner's Bill of Complaint and that the said Rachel Jemison left surviving her, her husband, Scott Jemison and her only child, one Mary Reeves. That Mary Reeves died intestate on or about to-wit: May 7, 1964 and left surviving her, three children, Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, who were the grandchildren of Rachel Jemison, deceased. (R 16; 118-157) At the conclusion of the hearing before the Honorable Judge James A. Hare, the attorney for the Petitioner stated that he would like to amend the Complaint to include the heirs of Mary Reeves, deceased. (R 156)

On July 9, 1965, the Petitioner filed a supplemental petition for additional relief and intervention, wherein he set forth that at the hearing which was held before Honorable James A. Hare, it was determined that the heirs at law of Rachel Jemison, deceased, were the three children of Mary Reeves, deceased, namely, viz: Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, and further stated that Aldrich Jemison was not the son of Rachel Jemison. He further set forth that the

interests of Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr had been conveyed by Quitclaim Deeds to the Petitioner Aldrich Jemison and attached copies of said Quitclaim Deeds. (R 4, 5; 34, 67, 71)

He further stated in said petition that Aldrich Jemison should be allowed to intervene on the behalf of the rights of Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr and that their interests in the real estate should be vested in him. (R 5)

On October 8, 1965, the Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, by and through their attorney of record Phillip Henry Pitts, filed a petition for leave to intervene in the cause of action and filed a Bill of Intervention. (R 6) In said Bill of Intervention, it set forth the fact that the Petitioner did not have any interests in the real estate in question and that the Intervenors had derived their title to said real estate from their mother Mary Reeves, deceased, who was the daughter and only child of one Rachel Jemison, deceased; it further set forth that at the time that Rachel Jemison died intestate, and at the time of her death she was a joint tenant with one, Scott Jemison and that her interests in the property upon her death went to her only child, Mary Reeves, deceased, who was the mother of your Intervenors. Said Bill of Intervention further set forth that the Intervenors had executed certain Quitclaim Deeds to the Petitioner, Aldrich Jemison wherein they conveyed their interest in said property to him. Said Bill of Intervention further alleged that at the time of the execution of said Deeds they did not have any knowledge of their interests in the hereinabove described real estate, nor did

they have any knowledge of the proceedings which were pending before the Circuit Court of Dallas County, Alabama, which were brought by the Petitioner Aldrich Jemison against the Respondent, Earline B. Brown. It was also alleged that said Petitioners were persons of a very limited education, had no business experience whatsoever and were not capable of taking care of themselves in an ordinary business transaction and that said Quitclaim Deeds were procured by the Petitioner Aldrich Jemison and his attorney, Charles S. Conley by fraud or undue influence. Said petition further alleged that said Deeds were executed upon representations which were false and which representations were conferred to the Intervenors by the Petitioner and his attorney. It further set forth that the Petitioner and his attorney knew that said lands were valued at approximately, to-wit: Twenty-two Thousand Dollars ($22,000.00), but yet the Respondents did not receive any consideration for executing said Deeds. Said Bill of Intervention prayed that the Bill be taken in the nature of a Cross-Bill and that the Petitioner be made a Cross-Respondent and that the Court enter an order or decree holding that the Deeds executed by the Intervenors be declared null and void. (R 6-9)

On October 8, 1965, notice was given by Judge James A. Hare of the Circuit Court of Dallas County, Alabama, to the said Aldrich Jemison that a Bill of Intervention had been filed. (R 10)

Subsequent thereto a motion to dismiss the Bill of Intervention was filed on the behalf of the Petitioner Aldrich Jemison. (R 10-11)

Also, a motion for a change of venue was filed by the Petitioner wherein it was alleged among other things that the Petitioner was of the belief that it was not possible to obtain a fair and impartial hearing on the merits of the case in the Circuit Court of Dallas County, Alabama. (R 12)

Thereafter, Judge James A. Hare of the Circuit Court of Dallas County, Alabama recused himself from said case and Honorabe Emmett F. Hildreth was appointed by the Honorable J. Ed. Livingston, Chief Justice of the Supreme Court of the State of Alabama, which said appointment was on November 5th, 1965. (R 12-13)

On December 22, 1965, a hearing on the Petitioner's Bill of Intervention was held in the Circuit Court of Dallas County, Alabama before the Honorable Emmett F. Hildreth. (R 21-118) At that time, the Petitioner's motion to dismiss was argued orally before the Court and the same was overruled. (R 15; 25-27) At that time, before a hearing on the merits was considered, an oral motion was made by the attorney who was representing the Intervenors under Title 46 Section 43 of the 1940 Code of Alabama (Recompiled 1958) which said motion was made for the purpose of having the attorney for the Petitioner show under what authority he was purporting to represent the Intervenors. (R 8) A hearing was held on said motion. (R 28-52) and the Court held that the firm of Pitts and Pitts had been employed by the Intervenors and that the said Intervenors had not employed the said Charles S. Conley, who is also the attorney for the Petitioner Aldrich Jemison. (R 15; 52) Said Court

also further found that the Petitioner's attorney Charles S. Conley could not have represented the Intervenors as the interest between the Petitioner Aldrich Jemison and the Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr was in direct conflict. (R 15)

The attorney for the Petitioner Aldrich Jemison had also filed a motion for change of venue (R 12) and after a hearing was held on said motion, the Court overruled the same. (R 57-59)

At the conclusion of the evidence presented to Judge Emmett F. Hildreth, it was agreed by the attorneys representing the respective parties that the evidence which had been presented to Judge James A. Hare, at the hearing on the sale for division was considered part of the evidence and that the said Judge Emmett F. Hildreth would rule both on the original Bill of Complaint and the Bill of Intervention.

Thereafter, on July 25, 1966 the Petitioner perfected this Appeal to the Supreme Court of Alabama by filing Notice of Appeal and requesting the Court to enter an order fixing the amount of a supersedeas bond to supersede the decree of the Court which was entered on December 22, 1965. (R 159-163)

On March 8, 1966, a decree was entered by Judge Emmett F. Hildreth allowing the supersedeas bond and fixing the bond in the amount of Five Thousand and no/100 ($5,000.00) Dollars. (R 160)

On June 21, 1966, the Petitioner filed a supersedeas bond as surety for costs. (R 161) Thereafter, on June 22, 1966, Citation of Appeal was issued by the

Circuit Court of Dallas County, Alabama, summoning the Respondent Earline B. Brown to appear at the next Term of the Supreme Court of Alabama. (R 163)

The Honorable Emmett F. Hildreth who heard the case between the Petitioner Aldrich Jemison and the Respondents Ollie Mae Reeves, Ocie Alma Reeves and Willie Payr, is Judge of the Seventeenth Judicial Circuit of the State of Alabama and was appointed to hear said case by the Chief Justice of the Supreme Court of Alabama. (R 12-13) Dallas County is in the Fourth Judicial Circuit of the State of Alabama and Judge James A. Hare residing in Selma is one of the Judges of said Court. Judge Emmett F. Hildreth is presiding Judge of the Seventeenth Judicial Circuit of the State of Alabama, and resides at Eutaw in Greene County, Alabama.

ARGUMENT

In opening, it should be pointed out to this Honorable Court that the Petitioner's entire basis for perfecting this Writ of Certiorari is that he is a Negro who was represented by a Negro Trial Counsel and that the Trial Judge who heard this case was biased against them because they were Negroes. It should be brought to the attention of this Honorable Court that all of the party litigants involved were of the Negro Race and it is the contention of the Respondent, upon whose behalf this Brief is filed, that there was ample evidence to sustain the findings of the Trial Court.

It should be pointed out that the Petitioner had a right to mandamus Judge James A. Hare to give a decision at the original trial.

As stated previously, the Respondent Earline B. Brown respectfully submits and denies that there was any denial to the Petitioner of any title, right, privilege or immunity under the Constitution of the United States. It should be pointed out to this Honorable Court that the Constitutional question (personal racial bias of Trial Judge) which is referred to in the Petitioner's Brief was not properly raised at the Trial Court level nor in the Supreme Court of Alabama. Neither the Trial Court nor the Supreme Court of Alabama ever had an opportunity to rule on this aspect of the case. While it is true that the Assignment of Errors did refer to the Fourteenth Amendment to the Constitution of the United States, there was no Assignment of Error that the Trial Judge who heard this cause was biased because of his personal racial bias against Petitioner and Petitioner's Negro Trial Counsel. If these questions were to be properly presented, it would have been incumbent upon the Petitioner's attorney to assert this fact at the trial of the case and also bring this fact to the attention of the Supreme Court of Alabama. It is true that the Petitioner did file a Motion for Change of Venue (R 12). However, the question of racial bias of the Trial Judge was not raised in this Motion and the Motion is completely silent in this respect. It would seem to the writer of this Brief that if the Petitioner's Trial attorney was dissatisfied with the appointment of Judge Emmett F. Hildreth by the Chief Justice of the Supreme Court of Alabama, this fact should have been raised by a motion to have Judge Hildreth recuse himself from the case or by taking other appropriate remedies available to him under the Laws and Statutes of the State of Alabama. This was

an Equity case and was properly brought in the county where the lands are situated and where the original Respondent Earline B. Brown resides. It is also to be noted that the original suit was filed by the Petitioner and the Petitioner and his Trial Counsel selected the forum. As it was stated by Judge Hildreth at the trial of this cause, he was somewhat confused as to what a change of venue would mean to the Petitioner, that he could hear the case in Dallas County as well as any other County. (R 58-59) It is to be kept in mind that this was an Equity case to be heard only by a Trial Judge and the cases pertaining to a change of venue where a jury is to decide the case are not applicable. If the Petitioner or his counsel were dissatisfied with the Trial Judge, a motion to require the Judge to recuse himself from the case should have been filed. However, this was not done and the Trial Court presided over by Judge Emmett F. Hildreth was never presented with the contention of the Petitioner that he was biased against the Petitioner and his Trial Counsel because of his own personal racial bias. It should be pointed out to this Honorable Court that Petitioner's own Trial Counsel stated at the hearing on this cause that he was perfectly satisfied with the Trial Judge and wanted the record to show that he was not charging that Judge Emmett F. Hildreth would not be fair and impartial. (R 38-39)

The Respondent Earline B. Brown respectfully submits that this Court does not have jurisdiction as there was no right, title, privilege or immunity specifically set up or claimed under the Constitution of the United States and the question of any racial bias on the part of the Trial Judge was never presented to the Trial

Court nor to the Supreme Court of Alabama. This being true, this Honorable Court has no choice except to refuse jurisdiction. *Deloach* v *Rogers,* 268 F 2d 928; *Edelman* v. *People of State of Cal.,* 73 S. Ct. 293, 344 U. S. 357; 97 L. Ed 387; *Application of Baer* 169 F 2d 770; *Lynch* v. *New York,* 293 U. S. 54, 55 S. Ct. 17; *Dept. of Mental Hygiene of Cal.* v. *Kirchner,* 85 S. Ct. 871, 380 U. S. 194; 13 L. Ed 753; *Hulbert* v. *City of Chicago,* 202 U. S. 275, 26 S. Ct. 617, 50 L. Ed 1206; *Mutual Life Insurance Co.* v. *McGrew,* 188 U. S. 291, 23 Supreme Court 375, 47 L. Ed 480; *Louisville R. R. Co.* v. *Woodford, Ky.* 234 U. S. 46, 34 S. Ct. 739, 58 L. Ed 1202; *Mallers* v. *Commercial Loan Co.,* 216 U. S. 613, 30 Supreme Court 438, 54 L. Ed 638.

It was held in *Edelman* v. *People of the State of Cal.,* supra, that the Supreme Court is without power to decide whether Constitutional rights have been violated and whether Federal questions were not seasonably raised in accordance with requirements of State Law. This case cited approvingly the case of *Hulbert* v. *City of Chicago,* supra and *Mutual Life Insurance Co.* v. *McGrew,* supra. It can be seen from these cases that this is a long standing rule of the Supreme Court.

The above cited cases clearly show that this Court has no choice except to deny jurisdiction of this case and deny the Petition for Writ of Certiorari. It was stated in the oft cited case of *Lynch* v. *New York,* supra, as follows:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a Court of a State that it

must appear affirmatively from the record, not only that a Federal question was presented for decision to the highest Court of the State having jurisdiction, but that its decision of the Federal question was necessary to the determination of the cause and that it was actually decided or that the judgment as rendered could not have been given without deciding it."

In the instant case, the record affirmatively shows that the Constitutional question raised by the Petitioner's counsel was not presented to the Trial Court nor to the Supreme Court of Alabama. In the case of *Louisville R. R. Co.* v. *Woodford, Ky.* supra, this point was discussed by the Supreme Court of the United States. The Court stated as follows:

"The decisions of this Court not only have repeatedly held that a Federal right in order to be reviewable here must be set up and denied in the State Court, but have often held that such claim of denial is not properly brought to the attention of this Court whether it appears that the State Court declined to pass upon the question because it was not raised in the Trial Court, as required by the State practice." (cases cited)

In the case at bar, there is no reason to believe that there was an attempt on the part of the Supreme Court of Alabama or on the part of the Trial Court to evade the decision of Federal questions, duly set up, by unwarranted resort to alleged rules under local practice.

It has long been the rule that the Alabama Supreme Court does not consider errors which have not been as-

signed or which have not been specifically and precisely raised in the Assignment of Error. *Congress of Industrial Organizations* v. *McAdory*, 65 S. Ct. 1395, 325 U. S. 472 89 L. Ed. 1741; *Ala. Chemical Co.* v. *Hall*, 101 So. 456, 212 Ala. 8, Assignment of Error in Alabama which is uncertain and indefinite as to a particular error complained of will not be considered and the Assignment of Error should concisely and precisely state of what the error consists. *Provident Life and Accident Insurance Co.* v. *Priest* 103 So. 678, 212 Ala. 576. Uncertain and indefinite assignments will not be considered. *Globe and Rudgers Fire Insurance Co.* v. *Jones*, 106 So. 172, 213 Ala. 656. An Assignment of Error which does not succinctly point out the error complained of with sufficient clearness and definiteness will not be considered in an appeal. *William E. Harden, Inc.* v. *Harden*, 29 Al. A. 411, 197 So. 94. *Snellings* v. *Jones* 33 Ala. A. 301 33 So. 2d 371, certiorari denied 250 Ala. 89 33 So. 2d 373; *Bennich* v. *Stewart* 34 Ala. A. 61 36, So. 599; *Taylor* v. *Taylor* 251 Ala. 374 37 So. 2d 645.

It was incumbent upon Petitioner to present to the Supreme Court of Alabama a clear and concise Assignment of Error stating in concise terms as to how the lower Court erred. In the case of *Myrick* v. *Carter*, 20 Ala. A 616, 104 So. 559, the Court stated as follows:

> "... It rest upon the Appellant to present a record to this Court that clearly shows the ruling complained of, and in assigning error should state concisely in writing of what the error consists. Rule 1, S. Ct. This Court is not called upon to speculate or

infer as to what was done or attempted by the Court below. . . ."

There were only two Assignments of Error that mentioned the Fourteenth Amendment to the Constitution of the United States and these two Assignments of Error contended that Petitioner's rights guaranteed by the Fourteenth Amendment were violated by the Trial Court by receiving incompetent evidence. The question of the racial bias of the Trial Judge was not assigned as error to the Supreme Court of Alabama nor was it raised in the lower Court. In order for the question to have been properly presented to the Supreme Court of Alabama, the Trial Court should have first had the opportunity of ruling on the question and could not be put in error without making a ruling. The Assignments of Error above mentioned were not in compliance with Rule 1 of the Rules of the Supreme Court of Alabama, nor were they in compliance with the decisions of the Supreme Court of Alabama.

The decision of the Supreme Court of Alabama is correct and is not in conflict with any other decision or decisions of this Honorable Court. The provisions of Title 28, U. S. C. Section 1257 (3) are inapplicable to this case as the Petitioner has not set up any title, right, privilege or immunities claimed under the Constitution, treaties or statutes of the United States on his behalf.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
THOMAS G. GAYLE

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Earline B. Brown

CERTIFICATE

I, T. G. Gayle (Thomas G. Gayle) attorney for Respondent, Earline B. Brown, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11 day of December, A. D. 1967, I served copies of the foregoing Brief on the Petitioner, by mailing copies in a duly addressed envelope, with first class postage, prepaid, to his Attorney of Record, as follows:

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APPENDIX

28 U. S. C. 1257 (3):

"*State Courts; appeal; certiorari,*. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States, June 25, 1948 c. 646, 62 Stat. 929."

Code of Alabama 1940, Rule 1, Rules of Supreme Court of Alabama:

"*Assignment of Errors and Joinder Therein.* In assigning errors, it shall be sufficient to state concisely, in writing, in what the error consists. Such assignments shall be written or typed upon transcript paper and bound with the transcript, and shall bear the certificate of the appellant, or his counsel, that a copy of the same has been served upon the appellee or his counsel. The words, "There is no error in the record," written or typed following the assignments of error, or contained in appellee's brief, shall be sufficient joinder in error."